THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.24273 OF 2006

DATED: 22nd NOVEMBER, 2006.

Between :

T. Koteswara Rao and others. .. Petitioners

And

1. The Authorised Officer, State Bank of India,
   Guntur, and 2 others. .. Respondents

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WRIT PETITION NO.24273 OF 2006

ORDER :

The petitioners, six in number, filed this writ petition seeking a declaration that the action of the respondents 1 and 2 in issuing the auction notice dated 18-10-2006 is arbitrary and illegal.

In the affidavit filed in support of the writ petition, it is stated that the petitioners are small scale traders who have lent certain amounts to the 3rd respondent which is a partnership firm consisting of 15 partners. Since the amounts invested by the said partners was insufficient to carry on the business, the petitioners had lent the amount against the promissory notes executed by the partners of the 3rd respondent firm. It is alleged that in spite of repeated requests made by the petitioners either the 3rd respondent firm or its partners did not repay the amounts due. On the other hand, the 3rd respondent had availed certain credit facilities from the 2nd respondent Bank also. It appears that since the 3rd respondent failed to discharge its liability, the 2nd respondent Bank having initiated the proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, issued the impugned sale notice dated 18-10-2006 proposing to sell the rice mill and godowns belonging to the 3rd respondent as is where is condition by inviting sealed tenders. The said action of the 2nd respondent is challenged in this writ petition primarily on the ground that the property

sought to be sold is an exempted item under Section 31 (1) of the Act. It is also contended that since admittedly the amount due to the 2nd respondent Bank is only Rs.10,92,058/- the entire secured assets worth more than Rs.1 crore ought not to have been brought to sale. It is also alleged that the 3rd respondent has colluded with the respondents 1 and 2 to defeat the rights of the petitioners.

From the material on record and the own version of the petitioners in their affidavit, it is clear that the property sought to be sold is a secured asset. It is also not in dispute that the 3rd respondent failed to discharge the loan availed from the 2nd respondent. It is not the case of the petitioners that the respondents 1 and 2 are not entitled to invoke the provisions of the Securitisation Act. There is also no allegation that they failed to follow the mandatory provisions under the Act.

In the circumstances, the impugned action of the 2nd respondent cannot be said to be arbitrary or illegal and the interference by this Court is warranted on any ground whatsoever.

The claim of the petitioners, if any, against the partners of the 3rd respondent on the face of it, is a dispute between private persons which does not involve enforcement of any legal right or statutory obligation. If aggrieved, it is for the petitioners to take appropriate steps against the 3rd respondent for recovery of the alleged amounts due. Having failed to do so, they cannot interdict the impugned sale proceedings. In the circumstances, Writ of Mandamus restraining the 2nd respondent from enforcing the statutory remedy under the Act cannot be issued.

The Writ Petition which is misconceived is hereby dismissed. No costs.

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G. ROHINI, J.

Dt. 22-11-2006

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